Supreme Court of the United States.

No. 123.—October Term, 1902.

The Roanoke. } Appeal from the District Court of the United States for the District of Washington.

[March 2, 1903.]

This was a libel *in rem* for materials, and also for work and labor, alleged to have been furnished by the libellants King and Winge in the repair of the steamship Roanoke, to certain contractors with the owners, who had full charge of the alteration and repair of the steamship. An intervening libel was also filed by one Fraser for labor and material furnished under the same conditions.

The cases resulted in decrees for the libellants, from which the North American Transportation and Trading Company, owner of the steamship, appealed directly to this court, and the following facts were found:

"The North American Transportation and Trading Company appeared as claimant and owner and the vessel was released upon its stipulation.

"It admitted all the allegations of the libel except that the work was done on the credit of the ship, which it denied except that it admitted that libelants had acted under the belief that they had a lien by virtue of law. It then alleged its incorporation and existence under the laws of the State of Illinois, the residence there at all times of its president and general manager, its maintaining only agencies at Seattle and at other places in Alaska and Canada, and its enjoying a high credit. The Roanoke it alleged to be an ocean-going vessel registered at Chicago, Illinois, under the navigation laws of the United States, with the name of Chicago painted on her stern. She was alleged to have been purchased by claimant in 1898 on the Atlantic coast, and, upon the Pacific coast since that time, employed between Seattle and the mouth of the Yukon in the summer, and between San Francisco and southern ports in the winter. It was further alleged that the claimant had never given any order for the material and labor described in the libel, and that these were furnished on the order of the contractor, who, before the filing of the libel and without any knowledge by claimant of these unpaid claims, had been paid by this claimant for these materials and labor in full. It was alleged in conclusion that the lien claimed by libelants was claimed under sections 5953 and 5954 of Bellinger's Code and Statutes of Washington, that such a lien was in this instance void, being in violation of the eighth section of the first article of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several States, was an illegal burden upon interstate commerce, and in violation also of the fourteenth article of the Constitution of the United States, as depriving claimant of its property without due process of law and without its equal

protection, and was in violation of the second section of the third article of the Constitution conferring on the courts of the United States admiralty and maritime jurisdiction.

"To the intervening libel of Fraser the same answer was made.

"To each of these answers respectively the libelants and intervening libelant excepted as insufficient, and the whole of each, to constitute any answer or defense to the libel.

"The exceptions were sustained, the claimant elected to stand on its answer and a decree was entered against it and its stipulators for the whole sum claimed in the libels."

Mr. Justice BROWN delivered the opinion of the Court.

This case is appealed directly from the District Court to this court under that clause of section 5 of the Court of Appeals Act, which permits such appeal "in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States." No additional significance is given to the appeal by certain questions certified by the District Court, as the power to certify is only given in cases appealed upon questions of jurisdiction. But as the case is properly before us upon direct appeal from the District Court, we proceed to dispose of the question of the constitutionality of the law of Washington, under which these proceedings were taken.

By that law (2 Bellinger's Code, secs. 5953 and 5954)—

"5953. All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

* * * * * *

"3. For work done or material furnished in this State, for their construction, repair or equipment, at the request of their respective owners, masters, agents, consignees, contractors, sub-contractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, sub-contractor, builder or person having charge, either in whole or in part of the construction, alteration, repair or equipment of any vessel, shall be held to be the agent of the owner, for the purposes of this chapter;

"Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of three years from the time the cause of action accrued."

"5954. Such liens may be enforced in all cases of maritime contracts or service by a suit in admiralty, *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime by a civil action in any District Court in this Territory."

In this connection the following propositions may be considered as settled:

1. That by the maritime law as administered in England and in this country, a lien is given for necessaries furnished a foreign vessel upon the

credit of such vessel. (*The General Smith*, 4 Wheat. 438; *The Grapeshot* 9 Wall. 129; Gen. Admiralty Rule 12,) and that in this particular the several States of this Union are treated as foreign to each other. (*The General Smith*, 4 Wheat. 438; *The Kalorama*, 10 Wall. 204, 212.)

2. That no such lien is given for necessaries furnished in the home port of the vessel, or in the port in which the vessel is owned, registered, enrolled or licensed and the remedy in such case, though enforceable in the admiralty, is *in personam* only. (*The Lottawanna*, 21 Wall. 558; *The Edith*, 94 U. S, 518.) This is a distinct departure from the Continental system, which makes no account of the domicil of the vessel, and is a relic of the prohibitions of Westminster Hall against the Court of Admiralty, to the principle of which this court has steadily adhered.

3. That it is competent for the States to create liens for necessaries furnished to domestic vessels, and that such liens will be enforced by the courts of admiralty under their general jurisdiction over the subject of necessaries. (*The General Smith*, 4 Wheat. 488; *The Planter*, (*Peyroux* v. *Howard*,) 7 Pet. 324; *The St. Lawrence*, 5 Black, 522; *The Lottawanna*, 21 Wall. 558; *The Belfast*, 7 Wall. 624; *The J. E. Rumbell*, 148 U. S. 1, 12.) The right to extend these liens to foreign vessels in any case is open to grave doubt. (*The Chusan*, 2 Story, 455; *The Lyndhurst*, 48 Fed. Rep. 839.)

The question involved in this case, however, is whether the States may create such liens as against foreign vessels, (vessels owned in other States or countries,) and under such circumstances as would not authorize a lien under the general maritime law. The question is one of very considerable importance, as it involves the power of each State, which a vessel may visit in the course of a long voyage, to impose liens under wholly different circumstances and upon wholly different conditions. In the case under consideration the vessel was owned by an Illinois corporation, enjoying a high credit, and maintaining agencies at Seattle and at other places in Alaska and Canada. The Roanoke was an ocean-going vessel, registered at Chicago under the navigation laws of the United States, with the name "Chicago" painted on her stern, although she was engaged in trade upon the Pacific coast between Seattle and the mouth of the Yukon in summer, and between San Francisco and southern ports in winter. Neither the owner nor master nor other officers of the vessel had given an order for the material and labor set forth in the libel, which were furnished upon the order of a contractor, who, before the filing of the libel and without any knowledge by the owner of these unpaid claims, *had been paid in full for these claims.*

Although this court has never directly decided whether materials and labor furnished by workmen or sub-contractors constitute a lien upon a

vessel—in other words, whether the contractor can be regarded as an agent of the vessel in the purchase of such labor and materials—there is a general consensus of opinion in the State courts and in the inferior Federal courts that labor and materials furnished to a contractor do not constitute a lien upon the vessel, unless at least notice be given to the owner of such claim before the contractor has received the sum stipulated by his contract. (*Smith* v. *The Steamer Eastern Railroad*, 1 Curtis, 273; *Southwick* v. *The Clyde*, 6 Blackf. 148; *Hubbell* v. *Denison*, 20 Wend. 181; *Burst* v, *Jackson*, 10 Barb. 219; *The Whitaker*, 1 Sprague, 229, 382; *Harper* v. *The New Brig*, Gilpin, 536; *Ames* v. *Swett*, 33 Me. 479; *Squire* v. *One Hundred Tons of Iron*, 2 Ben. 21; *The Marquette*, Brown's Adm. 364.)

The injustice of permitting such claims to be set up is plainly apparent. The master is the agent of the vessel and its owner in more than the ordinary sense. During the voyage he is in fact the *alter ego* of his principal. He is entrusted with an uncontrolled authority to provide for the crew, and for the preservation and repair of the ship. He engages the cargos, receives the freight, hires and pays his crew, and is entrusted perhaps for years with the command and disposition of the vessel. With full authority to bind the vessel, his position is such that it is almost impossible for him to acquaint himself with the laws of each individual State he may visit, and he has a right to suppose that the general maritime law applies to him and his ship, wherever she may go, unhampered by laws which are mainly intended for local application, or for domestic vessels. Local laws, such as the one under consideration, ordinarily protect the ship by requiring notice of the claim to be filed in some public office, limiting the time to a few weeks or months within which the laborer or sub-contractor may proceed against her, requiring notice to be given of the claim, before the contractor himself has been paid, and limiting his recovery to the amount remaining unpaid at the time such notice is received. The statute of Washington, however, provides for an absolute lien upon the ship for work done or material furnished at the request of the contractor or sub-contractor, and makes no provision for the protection of the owner in case the contractor has been paid the full amount of his bill before notice of the claim of the sub-contractor is received. The finding in this case is that the contractor, who had agreed in consonance with the usual course of business, to make the repairs upon this vessel, had been paid in full by the claimant. The injustice of holding the ship under the circumstances is plainly manifest.

Not only is the statute in question obnoxious to the general maritime law in declaring every contractor and sub-contractor an agent of the owner, but it establishes a new order of priority in payment of liens,

abolishes the ancient and equitable rule regarding "stale claims," and permits the assertion of a lien at any time within three years, regardless of the fact that the vessel may have been sold to a *bona fide* purchaser, not only without notice of the claim, but without the possibility of informing himself by a resort to the public records. It also gives, or at least creates the presumption of, a lien, though the materials be furnished upon the order of the owner in person.

No opinion upon this subject can afford to ignore the admirable discussion of Mr. Justice Story in the case of *The Chusan*, (2 Story, 255,) in which he refused to apply to a Massachusetts vessel a law of the State of New York, requiring a lien for supplies to be enforced before the vessel left the State:

"This statute is, as I conceive, perfectly constitutional, as applied to cases of repairs of domestic ships, that is, of ships belonging to the ports of that State. . . . But in cases of foreign ships and supplies furnished to them the jurisdiction of the courts of the United States is governed by the Constitution and laws of the United States, and is in no sense governed, controlled or limited by the local legislation. . . . For myself, I can only say that during the whole of my judicial life I have never up to the present hour heard a single doubt breathed upon the subject." To the same effect is *The Lyndhurst*, (48 Fed Rep. 839.)

While no case involving this precise question seems to have arisen in this court, we have several times had occasion to hold that where Congress has dealt with a subject within its exclusive power, or where such exclusive power is given to the Federal courts, as in cases of admiralty and maritime jurisdiction, it is not competent for States to invade that domain of legislation, and enact laws which in any way trench upon the power of the Federal government. Cases arising in other branches of the law furnish apt analogies. The principle is stated in a nutshell by Chief Justice Marshall in *Sturges* v. *Crowninshield*, (4 Wheat. 122, 193.) "But it has never been supposed that this concurrent power of legislation extended to every possible case in which its exercise by the States has not been expressly prohibited. The confusion resulting from such a practice would be endless. . . . That whenever the terms in which a power is granted to Congress, or the nature of the power required that it should be exercised exclusively by Congress, the subject is as completely taken from the State legislatures as if they had been expressly forbidden to act on it." This was said of a bankrupt law of New York which assumed to discharge the debtor from all liability for debts previously contracted, notwithstanding the Constitution had vested the power in Congress of establishing uniform laws on the snbject of bankruptcy. It was held that the States had a right to pass bankrupt laws until the power had been acted upon by Congress, though the law of New York discharging

the debtor from liability was held to be void as impairing the obligation of prior contracts within the meaning of the Constitution.

In *Hall* v. *DeCuir*, (95 U. S. 485, 498,) it was said that, inasmuch as interstate commerce is regulated very largely by Congressional legislation, it followed that such legislation must supersede all State legislation upon the same subject, and, by necessary implication, prohibit it, except in cases where the legislation of Congress manifests an intention to leave some particular matter to be regulated by the several States, as, for instance, in the case of pilotage. (*Cooley* v. *Board of Wardens*, 12 How. 299.) Upon this principle it was held that a law of Louisiana excluding colored passengers from the cabin set apart for the use of whites during the passage of steamboats down the Mississippi, was a regulation of interstate commerce, and therefore unconstitutional. To the same effect is *Sinnot* v. *Davenport*, (22 How. 227.) In the subsequent cases of *Louisville &c. Railway* v. *Mississippi*, (133 U. S. 587,) and *Plessy* v. *Ferguson*, (163 U. S. 537,) State laws requiring separate railway carriages for the white and colored races were sustained upon the ground that they applied only between places in the same State.

In the very recent case of *Easton* v. *Iowa*, (*ante*, p. ,) it was held that a State law punishing presidents of banks receiving deposits of money at a time when the bank was insolvent, and when such insolvency was known to them, was unconstitutional as applied to national banks whose operations were governed exclusively by acts of Congress. Said Mr. Justice Shiras: "But we are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control, possessed and exercised by two independent authorities." See also *Farmers' &c. Bank* v. *Dearing*, (91 U. S. 29;) *McCulloch* v. *Maryland*, (4 Wheat. 425.)

The following cases are also to the same general effect: *Degant* v. *Michael*, (2 Ind. 396;) *State* v. *Pike*, (15 N. H. 83;) *Lynch* v. *Clarke*, (1 Sand. Ch. 583, 644;) *Jack* v. *Martin*, (12 Wend. 311;) *Ex parte Hill*, (38 Ala. 429, 450;) *People* v. *Fonda*, (62 Mich. 401.) Although it is equally true that where Congress, having the power, has exercised it but incidentally, and obviously with no intention of covering the subject, the States may supplement its legislation by regulations of their own not inconsistent with it. (*Reid* v. *Colorado*, *ante*, p. .)

Bearing in mind that exclusive jurisdiction of all admiralty and maritime cases is vested by the Constitution in the Federal courts, which are thereby made judges of the scope of such jurisdiction, subject, of course, to Congressional legislation, the statute of the State of Washington, in so

far as it attempts to control the administration of the maritime law by creating and superadding conditions for the benefit of a particular class of creditors, and thereby depriving the owners of vessels of defenses to which they would otherwise have been entitled, is an unlawful interference with that jurisdiction, and to that extent is unconstitutional and void.

The decree of the District Court is therefore reversed, and the case remanded to that court with directions to dismiss the libels.

Mr. Justice HARLAN concurred in the result.

True copy.

Test:

Clerk Supreme Court, U. S.